

APPEAL NO. 170321
FILED APRIL 10, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 25, 2016, and concluded on January 4, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury does not extend to a fracture of the right calcaneus of the anterior aspect of the right foot/ankle, sinus tarsi syndrome of the right foot, or internal derangement associated with right ankle sprain/strain; (2) the certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. P) on April 21, 2014, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (3) the appellant (claimant) reached MMI on March 21, 2014; and (4) the claimant's IR is six percent.

The claimant appealed the hearing officer's extent of injury, MMI, and IR determinations, contending that the evidence does not support those determinations. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

The hearing officer's determination that the MMI/IR certification from Dr. P on April 21, 2014, did not become final under Section 408.123 and Rule 130.12 was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), and that the carrier has accepted a right ankle sprain/strain as the compensable injury. The claimant testified she injured her right ankle and foot when she rolled her foot on a step.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury does not extend to a fracture of the right calcaneus of the anterior aspect of the right foot/ankle, sinus tarsi syndrome of the right foot, or internal derangement associated with right ankle sprain/strain is supported by sufficient evidence and is affirmed.

MMI

The hearing officer's determination that the claimant reached MMI on March 21, 2014, is supported by sufficient evidence and is affirmed.

IR

The hearing officer determined that the claimant's IR is six percent as certified by (Dr. K), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division).

Dr. K examined the claimant on December 21, 2015. In a narrative report dated that same date Dr. K opined that the claimant reached MMI on March 21, 2014, and, using range of motion measurements of the claimant's right ankle taken by Dr. P on April 21, 2014, and the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association) (AMA Guides), determined that the claimant's IR is six percent. However, none of the Reports of Medical Evaluation (DWC-69) in evidence from Dr. K specify the claimant's IR; the boxes stating that Dr. K certified that the claimant has permanent impairment as a result of the compensable injury are checked but the space provided to record the claimant's IR is left blank.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. Rule 130.1(c)(3) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination. Rule 130.1(d)(1) states that a certification of MMI and assignment of an IR requires completion, signing and submission of the DWC-69 and a narrative report. Rule 130.12(c) provides, in part, that the certification on the DWC-69 is valid if there is an impairment determination of either no impairment or a percentage IR assigned.

None of Dr. K's DWC-69s in evidence contain a percentage IR assigned. Accordingly, Dr. K's six percent IR cannot be adopted.

There are two other IRs in evidence, one from (Dr. M) and the other from Dr. P. However, only Dr. P's MMI/IR certification certified that the claimant reached MMI on the affirmed MMI date of March 21, 2014. Dr. P examined the claimant on April 21, 2014, and certified that the claimant reached MMI on March 21, 2014, with a six percent IR. However, Dr. P made clear in his DWC-69 and attached narrative report that he considered diagnoses of right ankle internal derangement and sinus tarsi syndrome of

the right foot. As noted above the hearing officer's determination that the compensable injury does not extend to those conditions has been affirmed as being supported by the evidence. Dr. P considered and rated conditions that have been determined to be not compensable, and as such his six percent IR cannot be adopted.

There is no MMI/IR certification assigning a six percent IR in evidence that can be adopted. Accordingly, we reverse the hearing officer's determination that the claimant's IR is six percent. As there is no other IR in evidence that can be adopted, we remand the issue of the claimant's IR to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the compensable injury does not extend to a fracture of the right calcaneus of the anterior aspect of the right foot/ankle, sinus tarsi syndrome of the right foot, or internal derangement associated with right ankle sprain/strain.

We affirm the hearing officer's determination that the claimant reached MMI on March 21, 2014.

We reverse the hearing officer's determination that the claimant's IR is six percent, and we remand the issue of IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. K is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. K is still qualified and available to be the designated doctor. If Dr. K is no longer qualified or is not available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's IR for the (date of injury), compensable injury as of the March 21, 2014, date of MMI.

The hearing officer is to advise the designated doctor that the date of MMI is March 21, 2014, and request that the designated doctor examine the claimant and assign an IR as of the date of MMI in accordance with Rule 130.1(c)(3) and the AMA Guides. The hearing officer is also to advise the designated doctor that the compensable injury extends to a right ankle sprain/strain.

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on IR consistent with the evidence and this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge